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# Legislative Notice

Editor, Judy Gorman Prinkey

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## S. 1619—Internet Filtering Systems

Calendar No. 437

Reported by the Committee on Commerce, Science, and Transportation, without amendment. S. Rept. 105-226.

### NOTEWORTHY

- The McCain-Hollings bill is designed to protect children from exposure to sexually explicit and other harmful material when they access the Internet in schools and libraries.
- It would require schools and libraries receiving universal service funds to install filtering software designed to block access to indecent material. Once a school or library certifies that it will use a filtering system, it will be eligible to receive universal service fund subsidies for Internet access.
- School and library administrators are free to choose any filtering or blocking system that would best fit their community standards and local needs.
- Senator Burns is expected to offer an amendment to require that schools or libraries certify to the FCC that there is a use policy to prevent access by minors to "inappropriate matter" on the Internet, instead of using a filtering device, before receiving universal service assistance.
- Other amendments are expected to be offered by Senator Dodd regarding blocking software and Senator Feingold regarding increased penalties for exploitation of children.

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## BACKGROUND

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There is currently no limit on what may be placed on the Internet. In 1996, Congress passed the Communications Decency Act (CDA) as part of the Telecommunications Act. The CDA sought to prohibit the transmission of obscene or indecent messages to minors through the Internet by imposing criminal sanctions on the sender, unless the sender took good faith actions to restrict access by requiring certain designated forms of age verification. The CDA was signed into law by President Clinton on February 8, 1996, and was immediately challenged as unconstitutional. On June 11, 1996, a three-judge District Court entered a preliminary injunction against enforcement of the challenged provisions of the CDA. The case was then appealed to the Supreme Court which agreed with the District Court that the CDA abridged the freedom of speech protected by the First Amendment. The Court found that speech placed on the Internet deserves the highest level of protection under the first amendment and that, by placing broad prohibitions on what could be put on the Internet, the CDA imposed an unacceptably heavy burden on protected speech and was not narrowly tailored to meet the government's interest in protecting children.

There is currently little or no protection for children from harmful material on the Internet. While searching the Internet using innocuous words, such as "teen," "nurse," or "cheerleader," children can inadvertently run into adult, pornographic Web sites. Filtering or blocking what comes out of the Internet is an alternative method of protecting children from harmful material. These systems restrict what the user may receive over the Internet, rather than what a speaker may put on to the Internet. There are two main methods employed by filtering or blocking systems. One method restricts access based on the appearance of key words or phrases in the text of Internet material. Certain systems also prevent the transmission of personal data, such as addresses, phone numbers, and credit card numbers. The other method restricts access to sites previously found to be inappropriate. This list is continuously updated by the company which provides the filtering or blocking system. While neither method is perfect, both provide a reasonable means of protecting children from the majority of harmful material on the Internet.

Although the best protection for children from harmful online content is close supervision by their parents, this supervision is not possible when children use the Internet in schools and libraries. S. 1619 is intended to ensure that schools and libraries will effectively participate in the supervision of children's Internet use by taking the steps necessary to prevent children from being exposed to harmful online content. The bill seeks to protect children in a way that is least intrusive on the self-governance of schools and libraries and on the right of adults to engage in constitutionally protected speech guaranteed under the First Amendment. It does not prevent adults from engaging in constitutionally protected material in public libraries. Under S. 1619, the government is expressly banned from prescribing what material constitutes "matter deemed to be inappropriate for minors." Schools and libraries can tailor the filtering or blocking systems to meet the standards of their local communities.

The requirements of S. 1619 attempt to balance the right of States to administer their schools and libraries with the power of Congress to see that federal funds are appropriately used. The universal service assistance program is a form of subsidy undertaken as part of the spending

power of Congress and the courts have found that Congress may impose reasonable conditions on the receipt of federal funds or subsidies as part of its spending power. Therefore, the Committee has good reason to believe that the filtering or blocking conditions set on the receipt of universal service assistance to schools and libraries are constitutional.

Filtering is not infallible. Sites deemed appropriate by local communities may be inadvertently filtered and sites deemed inappropriate may not be filtered. But no filtering whatsoever will ensure that any and all material deemed indecent at the local level will be accessible to minors in schools and libraries.

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## BILL PROVISIONS

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### **Section-by-Section Analysis of S. 1619**

The purpose of the bill is to protect American children from exposure to harmful material while accessing the Internet from a school or library.

#### **Section 1. No universal service for schools or libraries that fail to implement a filtering or blocking system for computers with Internet access**

- Amends Section 254 of the Communications Act of 1934 to require elementary or secondary schools and libraries to implement filtering or blocking systems.
- Elementary or secondary schools and any libraries will not receive e-rate funds unless they are certified.
- **Certification for Schools:** In order to receive e-rate funds, elementary or secondary schools (or the School board or other authority with responsibility for administration of that school) must first demonstrate to the FCC that they have:
  - (a) selected a system to filter or block material available on the Internet which is deemed to be inappropriate for minors; and
  - (b) installed or will install the filtering or blocking system as soon as it obtains computers with Internet access.
- **Certification for Libraries:** Before receiving universal service assistance, a library must certify to the FCC that no less than one computer with Internet access employs a system to filter or block matter deemed to be inappropriate for minors. A certified library making a change in its system or ceasing to use a filtering or blocking system must notify the FCC within 10 days after making the change.

- **Local Determination of Content:** For purposes of certification for elementary or secondary schools, and any libraries, determination of what matter is inappropriate for minors shall be made by the school, school board, library or other authority responsible for making the required certification. No agency or instrumentality of the U.S. Government may:

(a) establish criteria for making that determination;

(b) review the determination made by the certifying school, school board, library or other authority; or

(c) consider the criteria employed by the certifying school, school board, library, or other authority in the administration of universal service funds to schools and libraries.

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## ADMINISTRATION POSITION

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There was no statement of administration position available at press time.

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## COST

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The Congressional Budget Office estimates that enacting S. 1619 would have no significant effect on the federal budget. Enacting S. 1619 would not affect direct spending of receipts; therefore, pay-as-you go procedures would not apply to the bill.

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## POSSIBLE AMENDMENTS

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**Burns.** Requires that schools or libraries certify to the FCC that there is a use policy to prevent access by minors to "inappropriate matter" on the Internet, instead of using a filtering device, before receiving universal service assistance.

**Dodd.** Require that, whenever an individual subscribes to an Internet service, the Internet service provider must offer such individual the ability to receive blocking software either for a fee or free.

**Feingold.** Increase criminal penalties for exploitation of children (similar to S. 900).

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